Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:SFL:MIA:TL-1644-99
SGarcia-Pages

date: March 12, 1999

to: Chief, Examination Division, South Florida District
Attention: Revenue Agent Margaret Vincent, Ft. Myers

from: District Counsel, South Florida District, Miami

---

subject: [redacted]
FYE [redacted]; [redacted] and [redacted]
Loan Commitment and Agent Fees

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

QUESTIONS

This responds to your memorandum of March 3, 1999 seeking our views on whether the taxpayer may deduct currently commitment and agent fees paid for a line of credit.

FACTS

The following is a summary of the facts set forth in your memorandum. If our understanding of the facts is incorrect in any way, please do not rely on this opinion until the effect of

the discrepancies is clarified. The taxpayer is a [redacted] management company which obtained a $[redacted] line of credit over a [redacted]-year term with [redacted]; the credit line expires in [redacted]. The taxpayer has deducted approximately $[redacted] each year for commitment and agent fees paid in connection with the line of credit. The taxpayer has expanded its business and has generated substantial stock appreciation since going public in [redacted] by means of cash acquisitions of health care providers throughout the United States. The taxpayer has not so far borrowed against the $[redacted] line of credit.

DISCUSSION

We endorse your analysis that the fees in consideration are not currently deductible. Instead they should be capitalized and amortized over the life of any loans obtained under the line of credit. If the taxpayer does not borrow funds, then it would be entitled to deduct the capitalized fees at the expiration of the line of credit in [redacted] within its fiscal year ending [redacted].

These results correctly reflect the long established views of the Service and the Tax Court. For example, the Service in Rev. Rul. 81-160, 1981-1 C.B. 312 opined that a loan commitment fee in the nature of a standby charge is an expenditure that results in the acquisition of a property right: the use of the borrowed money. Such a fee is similar to the cost of an option, which becomes part of the cost of the property acquired upon exercise of the option. If the right to borrow is exercised, the commitment fee becomes a cost of acquiring the loan and is to be deducted ratably over the loan' term. There is ample judicial support in the U.S. Tax Court and the courts of appeals for the Service's views that financing costs are amortizable over the life of the life of a loan. Fort Howard Corp. v. Commissioner, 103 T.C. 345, 355 n. 18 (1994)(citing authorities). In Anover Realty Corp. v. Commissioner, 33 T.C. 671 (1960), the Court held that loan related expenses had to be amortized over the life of the underlying loan, on the theory that such expenses are incurred to secure the use of money with the expectation of generating business income throughout the loan period. The Anover Court pointed to authorities holding that a borrower can deduct the remaining unamortized balance of mortgage discounts and expenses in the year the borrower sells the property.

It follows that the taxpayer here is to capitalize the commitment and agent fees as part of the cost of any borrowing made under the line of credit. If the option to borrow expires unexercised in [redacted] then the taxpayer would be entitled to deduct those fees in its taxable year for fiscal year ended

September 30, [redacted].

In contrast with the taxpayer's representatives, our opinion is that there would be no substantial hazards in litigating this issue in the U.S. Tax Court.

Please feel free to call me if you would like any additional assistance.

DAVID R. SMITH
District Counsel

By: Sergio Garcia-Pages
SERGIO GARCIA-PAGES
Special Litigation Assistant
Tel. No. (305) 982-5315

cc: Field Service